

Negotiating IT Contracts

The Basics

What are negotiations?



What can be Negotiated?

Anything in the contract.

Focus on:

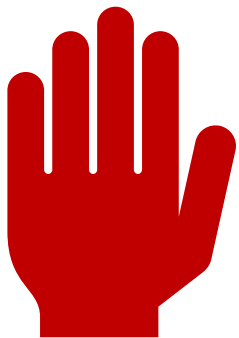
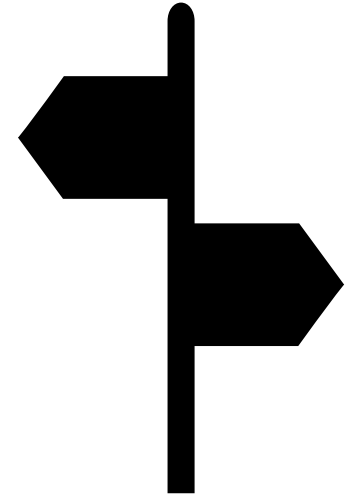
- Requirements;
- Schedule;
- Exceptions;
- Price; and
- Terms/Conditions.



Rules of Negotiations

In negotiations, you can:

- Point out areas where the Response varies from the requirements
- Discuss potential tradeoffs
- Reach agreements (which are then documented in the contract)
- Persuade the offeror to improve pricing/performance in the offer revision



NEVER reveal information from another offer/proposal as a basis of comparison

Interlude



zeorge497. "The Vendor Client Relationship - in Real World Situations."
YouTube, YouTube, 22 May 2009,
www.youtube.com/watch?v=R2a8TRScz7Y.

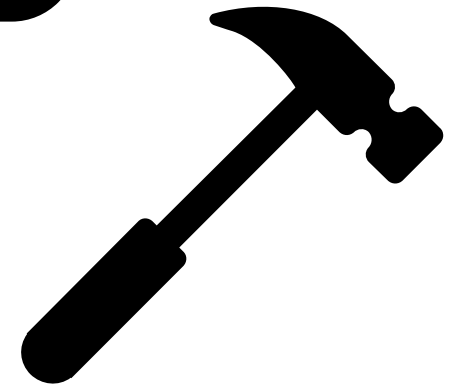
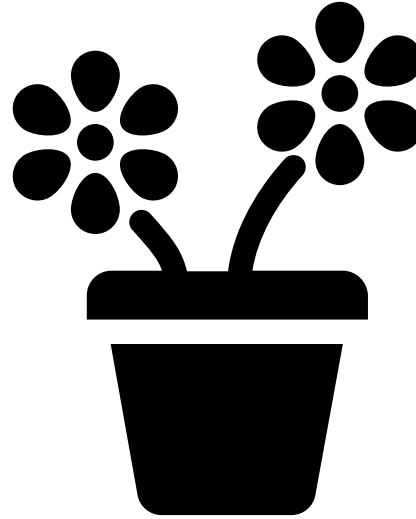
The Negotiators

Know your Type

There are generally three (3) types of negotiators:

- Soft Negotiator
- Analyzer
- Hard Negotiator

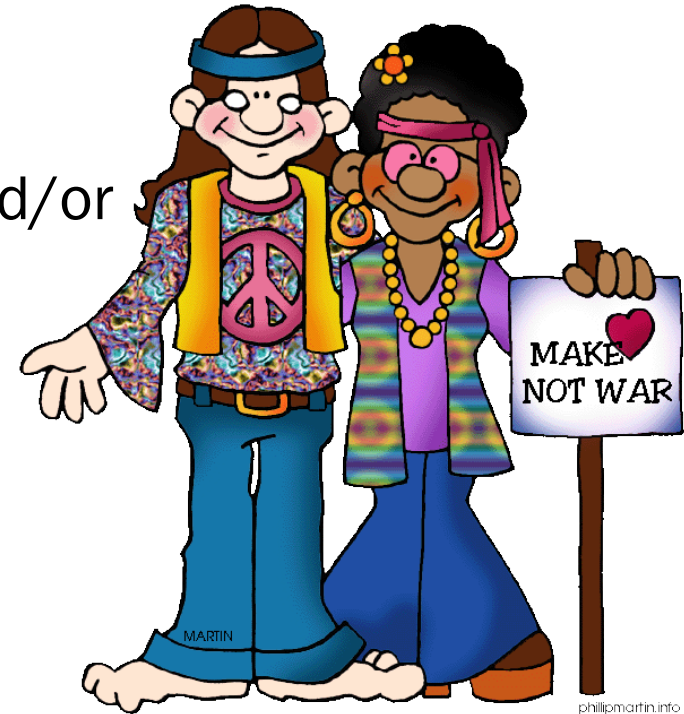
It is important to know who you are and be able to identify who the other side has brought



Soft Negotiator

Soft Negotiators:

- Build relationships first;
- Quest for agreement without conflict;
- Make concessions/Offer to gain value for the state; and/or
- Start with the bottom line.



Analyzers:

- Treat negotiations like a game wits;
- Focus on data, not people;
- Make concessions based on logic;
- Explain without emotion; and/or
- Reach settlement through reason
and persuasion.



Hard Negotiator

Hard Negotiators:

- Take the lead;
- Expect concessions;
- Draw a hard line/take a stand, and/or
- Not intimidated by conflict.



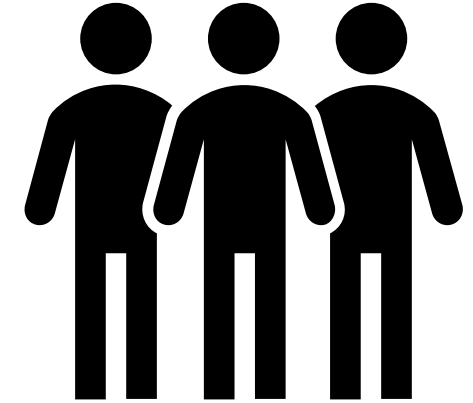
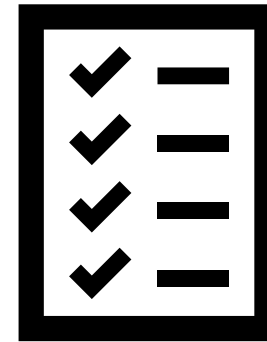
So who should you use?



**“We need to send the right guy for this negotiation ...
someone who’s adorable, cuddly, cute as a button ...
who could it be?”**

DIR Recommends...

- Soft negotiators
 - Build relationship;
 - Trying to reach consensus.
- Analyzers
 - Reduce emotional impact;
 - Recitation of facts.
- Hard negotiators
 - Overcome stalemate;
 - Damage control.



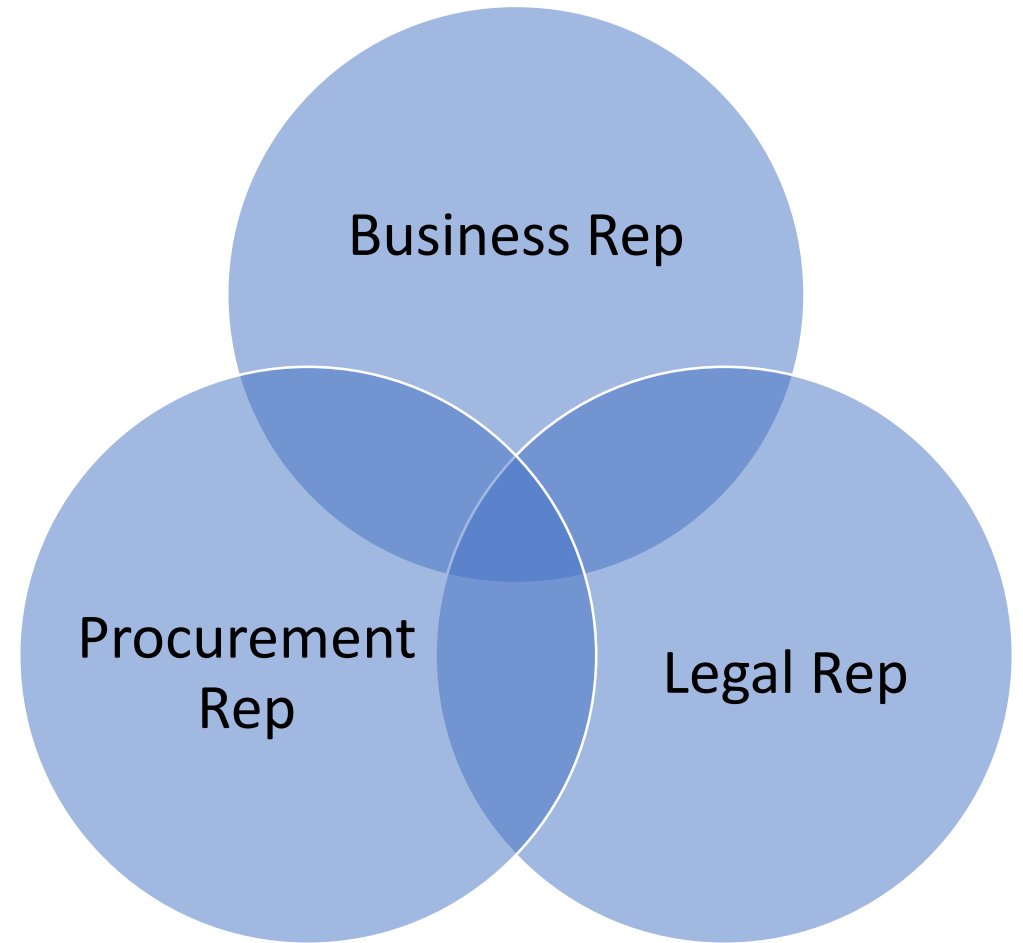
DIR's Dream Team

Who do we send in?

- Business representative
- Legal representative
- Procurement representative

Make sure to:

- Include subject matter experts (either in person or feedback prior to meeting)
- Assign clearly defined roles
- Empower everyone involved to call a caucus!



Interlude



“Negotiation Skills.” YouTube, YouTube, 8 Oct. 2014,
www.youtube.com/watch?v=q-0wJGZ_J3I.

Rules of the Road

Top 10 “Rules” for Negotiations

- 1. Be prepared!**
- 2. Don't negotiate against yourself;**
- 3. Aim high;**
- 4. Give yourself room to compromise;**
- 5. Use concessions wisely;**
- 6. Be prepared for someone to walk away;**
- 7. Apply pressure;**
- 8. Words matter!**
- 9. Non-verbal communication is important;**
- 10. Write it down!**

Be Prepared!

- Know the state's priorities;
- Know the other parties proposal!
- Have a detailed agenda and share it with the other side in advance;
- Develop a high level plan for the entire negotiation, and a detailed plan for each work segment;
- Build in flexibility to move work segments as key people become available;

Always Be Prepared

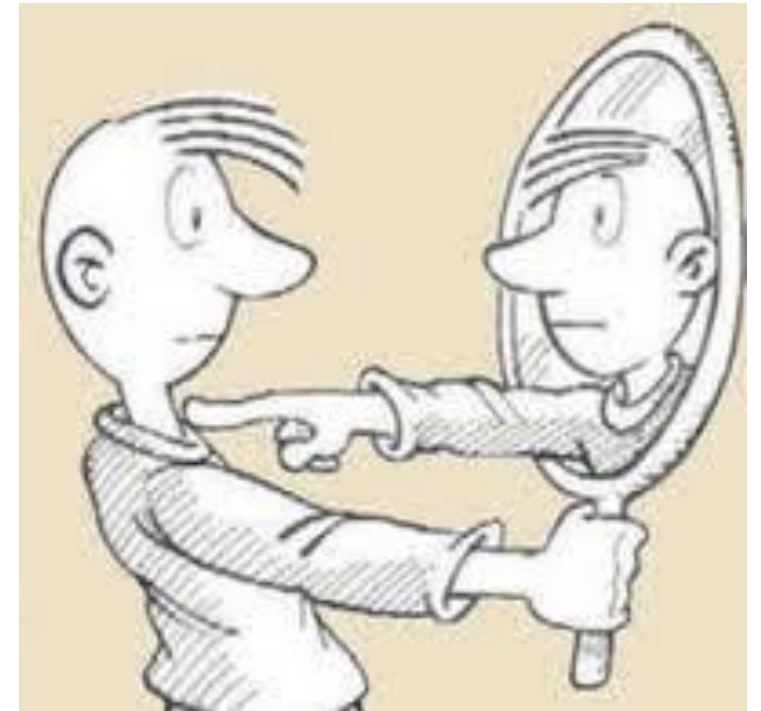


Read
thoroughly!



Don't Negotiate Against Yourself

- Stay firm on initial position;
- Explain rationale, but don't give in too early;
- Wait to understand the other side's priorities



Aim High

- Higher expectations = better performance;
- Better chance of success if you think you will do well;
- Buyers willing to pay more, sellers willing to accept less
- Aim for win-win



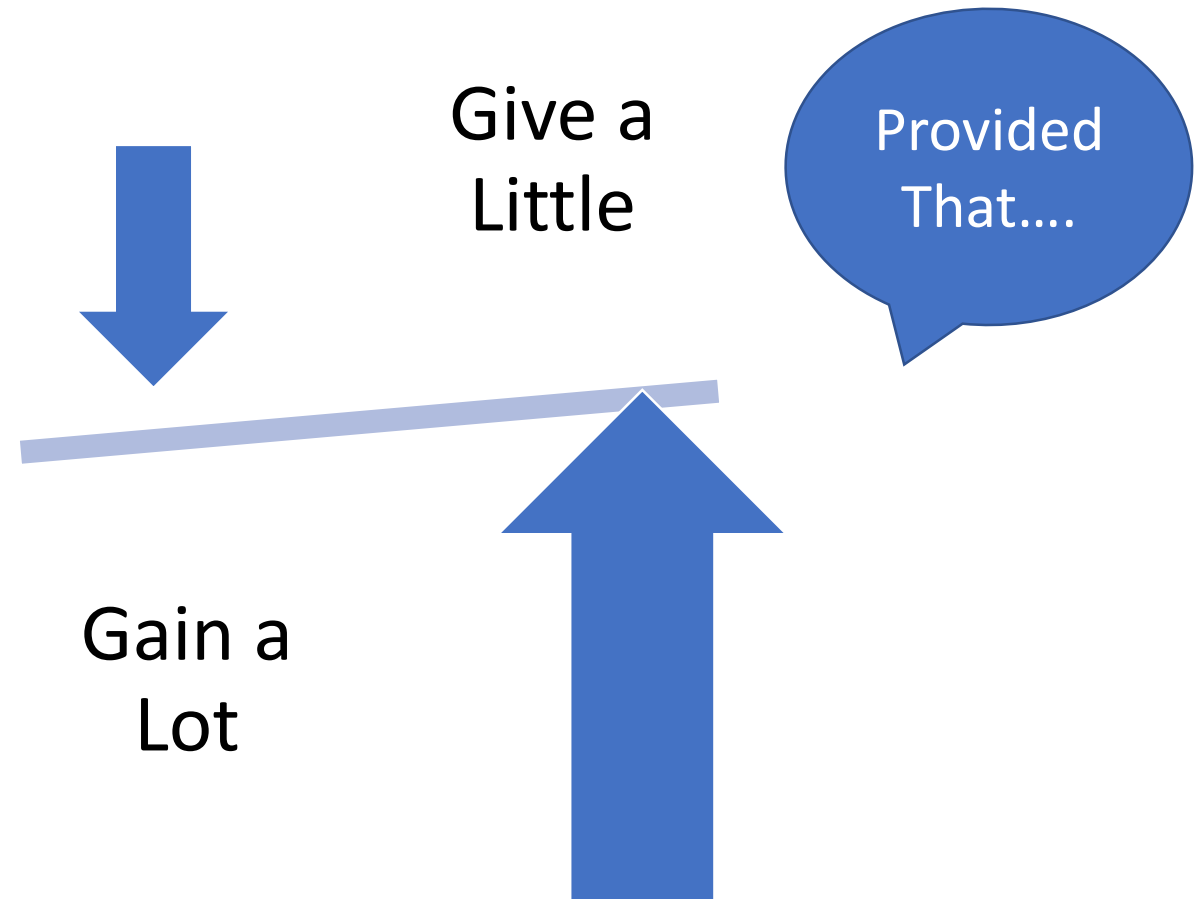
Room to Compromise

- Present initial position below what you think price should be
- Develop and present a variety of options
- Don't establish an unreasonable position;



Use Concessions Wisely

- Concede the “right” amount;
- Get something in return;
- Avoid concessions traps:
 - Equal
 - Splitting the difference



Be Prepared for Someone to Walk

- It's okay to walk away
- It's okay to come back
- Walk-outs can be an advantage
- Stay professional!



Apply Pressure

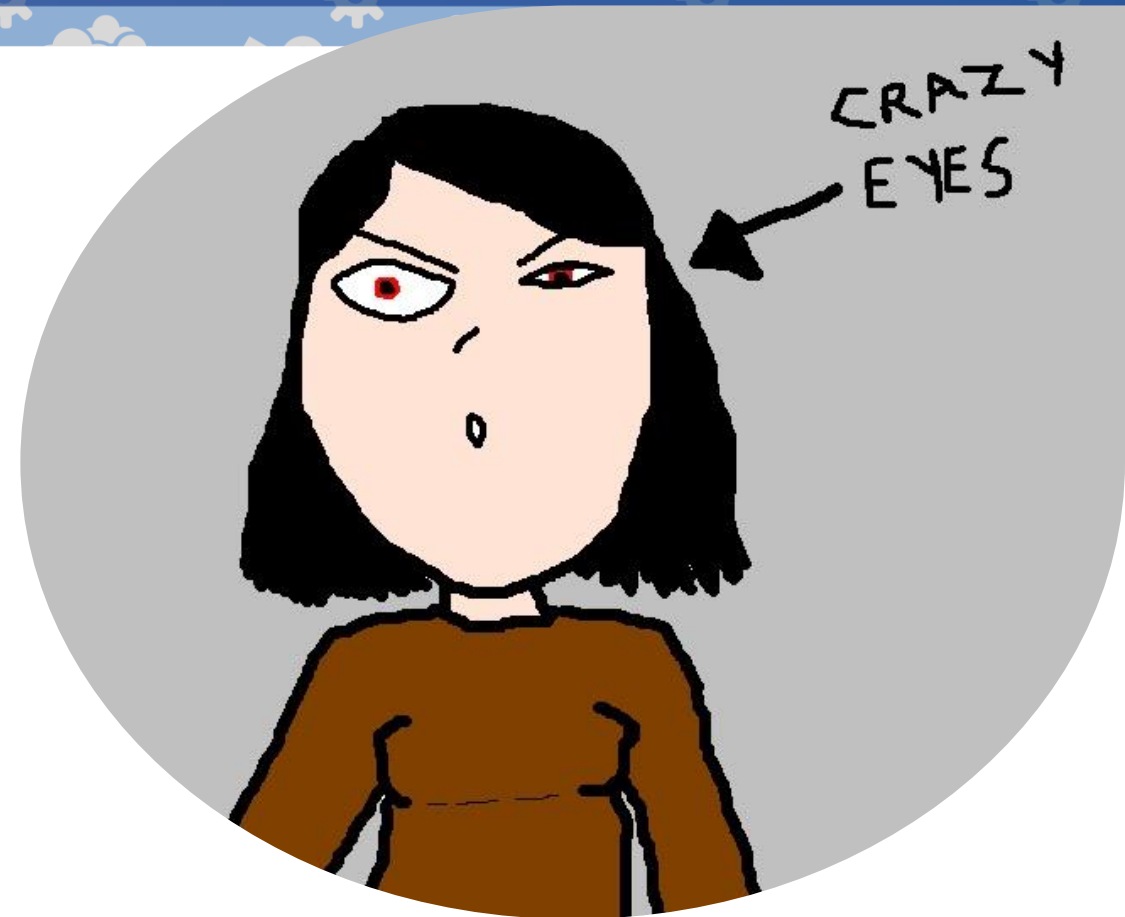
Alternative to contract:

- Canceling and re-soliciting
- Requirement changes
- Terms/Conditions changes
- Performing part/whole in-house




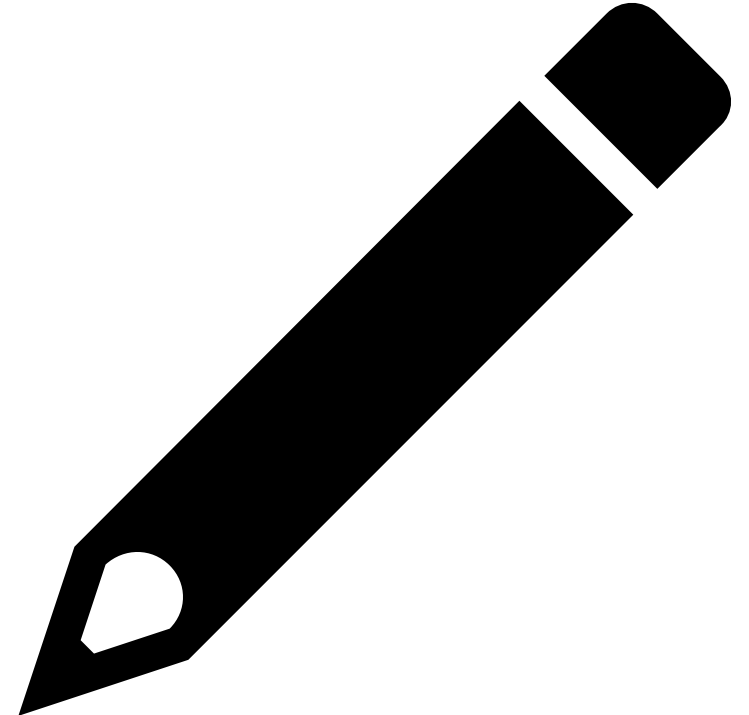
Words Count/Non-verbal too

- Don't use provocative terms;
- Be polite; show respect;
- Negotiate from strength;
- Be personable, but business like;
- Keep it simple
- Emphasize the need for cooperation;
- Never make personal comments
- Be calm and don't lose your temper
- Body language matters!



Get it in Writing!

- 
- If it's not in the contract, you can't enforce it;
 - Verbal understanding won't be remembered years from now;
 - No clarity = multiple change orders



What to Watch For

IT “Gotchas”

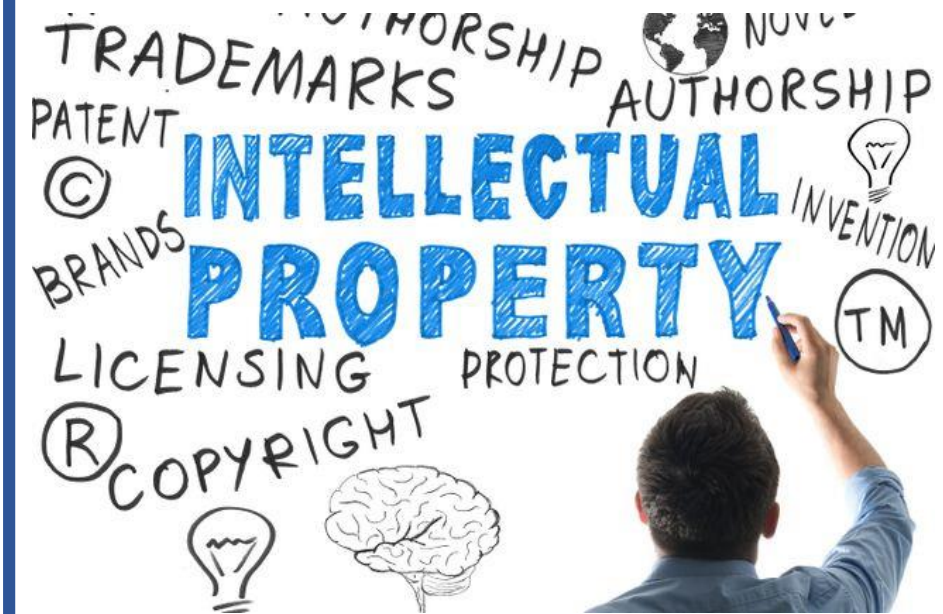
- Intellectual Property Rights
- Limitation of Liability
- Audit Rights
- Termination Assistance



Intellectual Property

Things to Consider:

- Know your scope of work (what is being developed new, what might be built on existing platforms)
- Understand the deliverables (work product, customization, configurations)
- License back (royalty free, ongoing updates)



Limitation of Liability

- What is the minimum required?
- What areas have give?
- What is the industry doing?



SSAE 16 Service Organization Controls (SOC) 2

There are 2 Types of SOC 2 reports

- Type I
 - Looks at point in time
 - Auditor opinion based on the description of the controls and documentation around them
- Type II
 - Report on the description of a service organizations system and the suitability of design and operating effectiveness
 - Controls described and evaluated for a minimum of 6 months



Termination Assistance

Lay out what you will need in terms of:

- Time
- Resources
- Support



Be reasonable; termination assistance has a cost

DIR Can Help!

Too Much? Try DIR Contracts

Pre-competed and pre-negotiated

There are 2 different categories:

- ✓ **Cooperative Contracts** – these can be further negotiated
- ✓ **Shared Services**



Cooperative Contracts Benefits

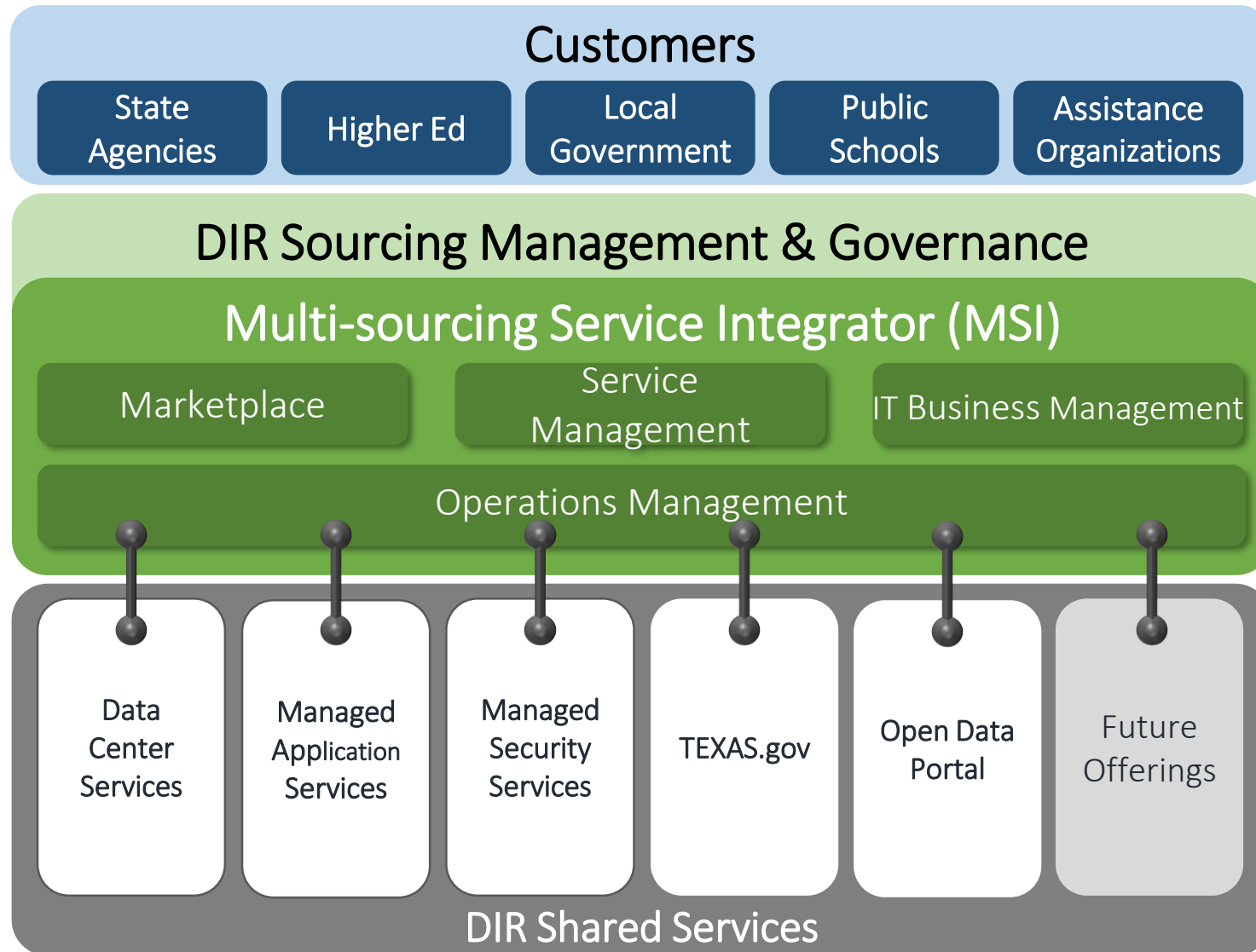


Streamlines Purchasing Process

- Pre-Negotiated Contracts
 - Reduce purchasing and contract cycle time
 - Reduce duplicate efforts
- Simplifies sales process for vendors
- Competition is built into the program
- Create savings by leveraging the state's buying power
- Allow flexibility for DIR customers to negotiate pricing and other terms and conditions specific to customer requirements

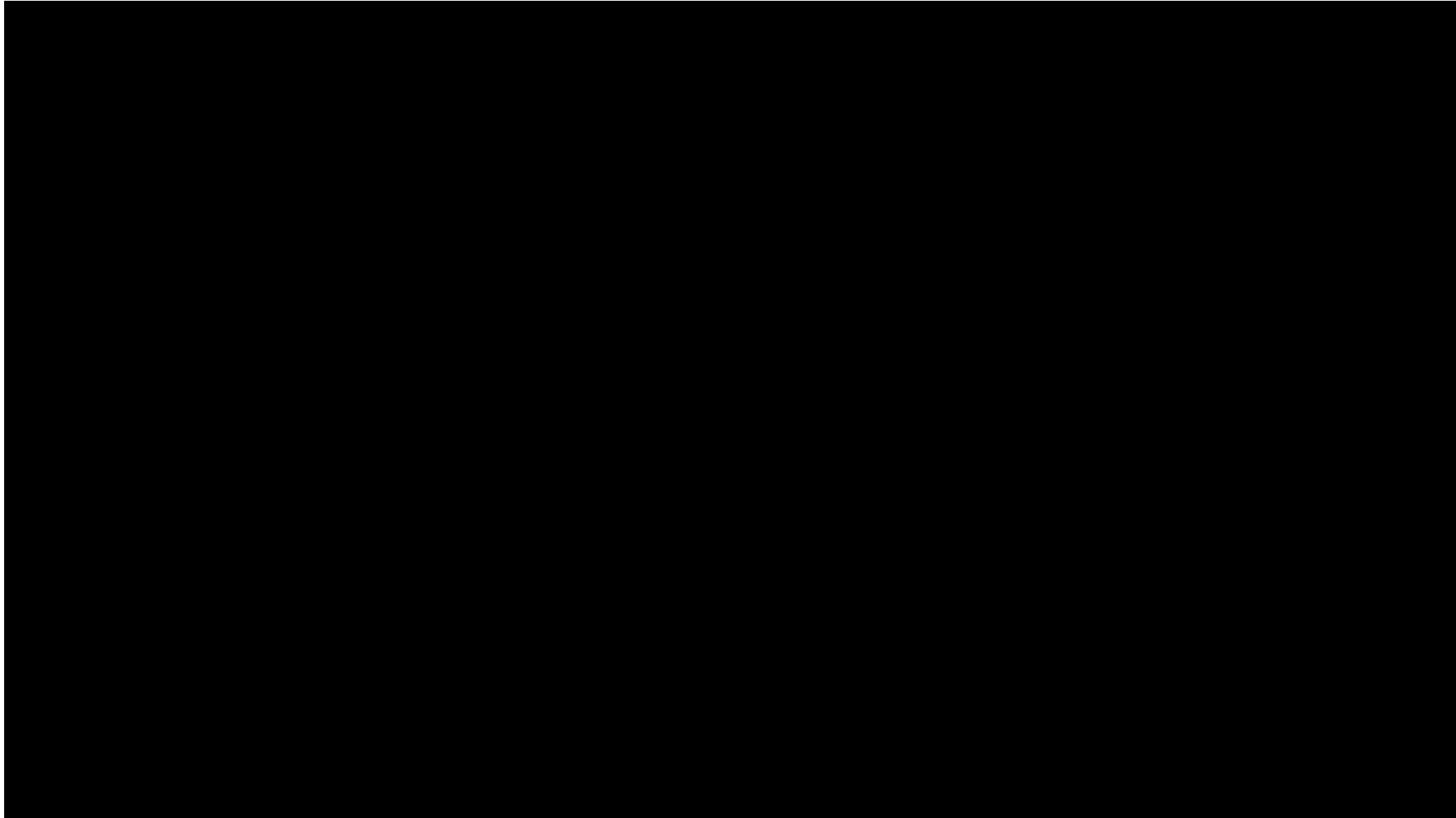
- Term of your Engagement
 - ✓ Customers purchase/agreement survives DIR Contract, as long as it was arranged before DIR Contract Expires
 - ✓ Be aware of any areas where Vendor seeks to vary from DIR terms; can always enhance Customer's terms but not diminish or conflict with DIR contract terms
 - ✓ DIR contract terms generally have priority over almost all vendor documents (note exception for third party license agreements)

Shared Technology Services



In Closing...

Putting it all together...



Questions and Answers

Thank you!!

Contact

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